IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1731 of 2025

An application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Narottam Prusty ..... ***Petitioner***

Mr. Smruti Ranjan Rout, Adv.

-versus-

State of Odisha & Anr. ..... ***Opposite Parties***

Ms. Babita Kumari Sahu, A.G.A.

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

Date of Hearing : 13.08.2025 | Date of Judgment: 22.09.2025

A.K. Mohapatra, J. :

1. By filing the present CRLMC application under section 528 B.N.S.S., 2023, the Petitioner seeks to invoke the inherent power of this Court to quash the impugned order dated 14.02.2025 passed by the learned ADJ-cum-Spl.Judge (POCSO), Jagatsinghpur in Spl. G.R.Case No.14 of 2025 which corresponds to Nuagaon P.S.Case

No.39 of 2025 thereby framing charge against the Petitioner under section 65(2) of B.N.S., 2023 read with Section 6 of POCSO Act.

2. Heard learned counsel for the Petitioner as well as the learned Additional Government Advocate. Perused the CRLMC application as well as the prayer made therein.

3. Being aggrieved by the procedure adopted by the learned Special Court under the POCSO Act in supplying police papers and framing charge on the very same day without providing an opportunity to the accused-Petitioner to file a discharge application, the Petitioner has approached this Court by filing this application. Since the issue involved in this application is a pure question of applicability of the procedural law to the facts of the case, the present is being taken up for hearing and adjudication of such issue in presence of learned State Counsel.

4. Learned counsel for the Petitioner at the outset contended that on the basis of the F.I.R. dated 14.02.2025 Nuagaon P.S. case was registered for commission of offence punishable under section 65(2) of B.N.S, 2023 read with Section 6 of POCSO Act. The Petitioner has been shown as the sole accused in the said F.I.R. He further contended that in connection with the aforesaid case, the Petitioner was arrested and remanded to custody and faced trial in the aforesaid case. In course of his argument, learned counsel for

the Petitioner contended that the impugned order dated 21.04.2025 passed by the learned ADJ-cum-Spl Judge (POCSO), Jagatsinghpur is unsustainable in law, inasmuch as the Police papers were supplied to the Petitioner on 21.04.2025 while accepting the vakalatnama of the learned conducting counsel for the Accused-Petitioner. Although the first part of the order dated 21.04.2025 reveals that the vakalatnama of the conducting counsel was accepted, the accused was provided with Police Papers and remanded to custody till 12.05.2025, however, later on the very same day another order has been passed. On perusal of the order passed later in 21.04.2025, it appears that hearing of charge took place on the very same day. Accordingly, charge has been framed against the Accused-Petitioner under section 65(2) of B.N.S., 2023 read with Section 6 of POCSO Act, and the contents of the charge were read over and explained to the accused to which he pleaded not guilty.

5. Learned counsel for the Petitioner at this juncture contended that on 21.04.2025 on production of Accused-Petitioner, he was served with Police Papers and he was remanded to jail custody. However, later on the very same day another order was passed indicating that hearing of charge took place and charge has been framed, read over and explained to the accused. In view of the

aforesaid position, learned counsel for the Petitioner contended that the procedure prescribed in the B.N.S.S. has been violated and the Petitioner has not been granted any opportunity to file a discharge Petition as provided under Section 250 of BNSS. In such view of the matter, learned counsel for the Petitioner contended that the impugned order dated 21.04.2025 has been passed in violation of the provisions prescribed under the B.N.S.S., 2023.

6. Learned Additional Government Advocate on the other hand contended that the trial court has not committed any illegally, inasmuch as the charge was framed in presence of the accused. Moreover the order dated 21.04.2025 which was passed in the later part of the day reveals that the hearing took place on the question of framing of charge. Further, on the satisfaction of the special court with regard to materials on record, charge has been framed under the aforementioned sections, and it was read over and explained to the accused. Thereafter, the accused has pleaded not guilty and claimed trial. As such, the matter proceeded for trial. Thus, it is argued by the learned counsel for the State that the learned special court has not committed any illegality in the matter. As such the impugned order dated 21.04.2025 at Annexure-4 does not call for any interference by this Court at this stage.

7. Having heard learned counsels for the respective parties, on careful examination of the background facts and on close scrutiny of the order dated 21.03.2025 at Annexure-4 this Court observes that the Petitioner, being aggrieved by the order dated 21.04.2025 thereby framing charge against the Petitioner without providing him an opportunity to file an application for discharge, has approached this Court by filing the present application under section 528 of the BNSS. On a careful examination of the impugned order dated 21.04.2025, this Court observes that two orders have been passed on the very same day. The first part of the order indicates that appearance of the conducting counsel was accepted on production of the accused. Thereafter Police Papers were supplied to the accused. The accused was remanded to jail custody till 12.05.2025. Another order was passed on that day, which reveals that the case was taken up again for framing of charge. Accordingly, after hearing the Special P.P, Charge has been framed taking into consideration the final form submitted by the I.O. and the document annexed to the Final Form. The order dated 21.04.2025 which was passed later on the same day does not reveal that any opportunity of hearing was given to the accused or his conducting counsel to file a discharge petition. Finally, on the later part of the day charge has been framed under Section 65(2) of BNS read with Section 6 of

POCSO Act, and the same was read over and explained to the accused. In the present application, this Court is required to test the validity of the order dtd.21.04.2025.

8. In the present application, this Court is required to assess as to whether the procedure followed by the Court below in the present case while framing charge is in conformity with the statutory provisions contained in Section 251 of B.N.S.S. which corresponds to 228 of the Cr.P.C. Section 251 of BNSS is identical to Section 228 of the Cr.P.C albeit with a slight modification in Sub-Section (1)(b) of Section 251 of the BNSS 2023 wherein a time limit of 60 days, from the date of first hearing on charge, has been provided to frame the charge in writing. For better appreciation the provision of Section 251 BNSS is quoted herein below;

> **"*251. Framing of charge*.**—*(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*
>
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

9. On perusal of the aforesaid Section 251 of the BNSS, it can be seen that Sub-Section (1) of Section 251 provides that the Judge will proceed to frame the charge "after such consideration and hearing as aforesaid". The hearing and consideration referred to in Sub-Section (1) of Section 251 clearly alludes to the preceding section, i.e. Section 250 of BNSS which is the *pari materia* provision corresponding to Section 227 of the Cr.P.C. The aforesaid Section 250 deals with "Discharge" and postulates that;

"250. Discharge.—(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232.

(2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

The aforesaid Section 250 of BNSS, 2023 clearly states that the accused will be provided with an opportunity to file an application for discharge and upon such application being filed, the learned Court below shall consider the case records, documents submitted and hear the prosecution as well as the accused before determining as to whether there are sufficient grounds to proceed against the accused. In the event the learned Court below is of the view that there are no sufficient grounds to proceed against the accused, the accused shall be discharged. However, if after hearing both the accused and the prosecution, the learned Court below considers that there is enough material to draw the presumption that the accused might have committed the offence, the trial court will then proceed to frame the charge as per Section 251 BNSS.

10. The aforesaid Section 250, specifically in sub-section (1) further provides a time limit of 60 days from the date of commitment of the case under Section 232, within which the discharge application may be filed by the accused. No such time-limit was fixed under the erstwhile Section 227 of the Cr.P.C and it is a newer introduction in the BNSS. However, this Court observes that there is a slight legislative gap in reckoning the 60-day period in cases where committal procedure is contemplated per se, specifically in respect of Special Courts constituted under various

legislations, including the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"). The instant case involves offences under the POCSO Act. In prosecution under the POCSO Act, the Special Court, by virtue of Sub-section (1) of Section 33 thereof, is empowered to take cognizance of any offence under the Act upon receipt of a complaint of facts constituting the offence or upon a police report of such facts, without the accused ever being committed to it for trial. Section 33(1) of the POCSO Act is reproduced hereinbelow for better appreciation.

> *"**33. Procedure and powers of Special Court.**—(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts…"*

In such circumstances, the legislative scheme under BNSS does not delineate with precision the exact point from which the 60-day period under Section 250(1) BNSS is to be computed.

11. In an effort to bridge such legislative gap, this Court deems it apposite to refer to Section 262 BNSS, which is the *pari materia* provision to Section 239 Cr.P.C, insofar as the Section provides for the discharge of the accused in a warrants case instituted upon a police report. Section 262 BNSS, however, is divided into two sub-sections and departs from Section 239 of Cr.P.C in two important

respects. *Firstly*, Sub-Section (2) of Section 262 reproduces the substance of Section 239 Cr.P.C but additionally contemplates the examination of the accused either physically or via 'audio-video electronic modes'. *Secondly*, and germane to our present discussion, Sub-Section (1) of Section 262 BNSS prescribes a time-limit of 60 days, from the date of supply of copies of documents under Section 230 BNSS, within which the accused may prefer a discharge application. In view of the above, taking aid of Section 262(1) BNSS, this Court is persuaded to take the considerate view that in cases before Special Courts instituted under special statutes like the POCSO Act, as in the present matter, where there is no contemplation for committal of the case to the Sessions Court, the time period of 60 days for preferring a discharge application under Section 250(1) BNSS may be so interpreted as commencing from the date of supply of documents and police papers to the accused.

12. At this stage it would be profitable to examine some of the relevant provisions of the POCSO Act, 2012. Chapter 7 of the Act deals with the Special Courts and Section 28 of the Act requires that the State Govt. in consultation with the Chief Justice of High Court shall designate for each district, a Court of Sessions to be Special Court to try the offence under the Act. Section 31 of the POCSO Act, 2012 provides for application of Code of Criminal Procedure,

1973 (now the BNSS, 2023). It also provides that unless as otherwise provided under the POCSO Act, 2012, the provisions of the Code of Criminal Procedure, 1973 (now the BNSS, 2023) shall apply to the proceedings before a Special Court and for the purpose of the said provision, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court shall be deemed to be a public prosecutor. Thus, there is no doubt that the procedure laid down in the Cr.P.C (now BNSS, 2023) shall apply to the cases under the POCSO Act, 2012 and the Special Court under the said Act shall be deemed to be a Court of Sessions. Therefore, it is not in doubt that the procedure which is applicable to the Sessions triable cases under the Cr.P.C shall have application to the cases under the POCSO Act, 2012 being tried by the Special Courts.

13. Chapter 8 of the POCSO Act, 2012 provides for the procedure and power of the Special Courts and recording of evidence. The procedure as enumerated in Chapter 8 of the POCSO Act, 2012 are to be read harmoniously with the procedure prescribed in the Cr.P.C (now BNSS, 2023). Moreover, in view of the savings provision contained in Section 31, the provisions in the Cr.P.C, insofar it does not have any conflict with the provisions of the POCSO Act, 2012, shall apply to the trials conducted by the

Special Court under the POCSO Act, 2012. Section 35(2) provides that the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking of cognizance of the offence.

14. The next question that falls for consideration by this Court is with regard to the provision contained in Section 35(1) of the POCSO Act, 2012. Section 35(1) provides for recording of the evidence of child-victim. The evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and the reasons for delay, if any, shall be recorded by the Special Court. On a plain reading of the Section 35(1) it appears that the same is in conflict with the provisions contained in Section 227 & 228 of the Cr.P.C (corresponding to the provisions of Section 250, 251 of the BNSS, 2023). It is apt to mention here that the recording of evidence in a criminal trial, comes into picture after commencement of the trial, i.e., after framing of the charge. So far framing of the charge is concerned, Section 227 and 228 of the Cr.P.C (250 and 251 of the BNSS, 2023) provide for a specific procedure to be followed while framing the charge in a case triable by the Sessions Court.

15. While framing the charge the statute gives an opportunity to the accused to seek for his discharge by filing an application. Such

application for discharge, as per Section 250 of the BNSS, 2023 is to be filed within a period of 60 days from the date of commitment of the case under Section 232 of the BNSS. Similarly, Section 251 of the BNSS under sub-section 1(b) provides that the charge against the accused shall be framed within a period of 60 days from the date of first hearing on charge. On a conjoint reading of Section 250 and 251 of the BNSS it appears that a window has been provided to the accused to file an application for discharge within a period of 60 days from the date of commitment of the case under Section 232 and the Court framing the charge is under a legal obligation to frame such charge in writing within a period of 60 days from the date of first hearing on charge. In contradistinction to the aforesaid provisions, Section 35 of the POCSO Act, 2012 provides that the evidence of the child is to be recorded within a period of 30 days from the date of cognizance of the offence is taken by the Special Court. The aforesaid anomaly is required to be resolved by interpreting both the statutes in a purposive manner.

16. While analyzing the aforesaid anomaly, this Court observes that Section 31 of the Special Act, 2012 provides that save as otherwise provided in this Act, the provisions of the Cr.P.C shall apply to the proceeding before a Special Court. Therefore, the provision contained in Section 35 would definitely override the

provisions contained in the Cr.P.C to the extent the same is in conflict with Cr.P.C (BNSS). Another important question that arises for determination at this stage is as to whether the BNSS, 2023 being a later statute, the provisions contained in Section 250 and 251 thereof will have an overriding effect on the provisions of the POCSO Act, 2012. Since the learned counsels from both sides did not raise the said point before this Court it would not be proper to go into the details of the said aspect of the matter. In any case, this Court, accepting that the POCSO Act being a special statute will have precedence over the general statute, shall proceed further in the matter.

17. While interpreting the provisions contained in Cr.P.C (now BNSS, 2023) as well as the provisions contained in POCSO Act, 2012 every endeavor shall have to be made by this Court to see that the provisions contained in POCSO Act as well as in the Cr.P.C (now BNSS, 2023) are followed subject to Section 31 of the POCSO Act, 2012. On an overall reading of both the statutes, this Court is of the considered view that the provisions contained in both the Acts can very well co-exist and that the same are to be read and interpreted in a harmonious manner, so that there exists no conflict between the two statutes.

18. The cases that are to be tried by the Special Courts are to be tried by following the procedure applicable to the Sessions triable cases as the Special Courts have been held to be Sessions Courts by operation of the statute. Moreover, Section 33 of the POCSO Act, 2012 provides that the Special Court may take cognizance of the offences without accused being committed to it for trial, upon receiving a complaint of fact which constitutes such offence, or upon a police report of such facts. On a close scrutiny of the provisions contained in Chapter 8 of the POCSO Act, 2012 it appears that no specific provision has been provided with regard to the framing of charge or discharge of an accused. There is also no embargo with regard to framing of the charge as provided in the Cr.P.C (now BNSS, 2023). Sub-Section 9 of Section 33 of the POCSO Act postulates that Special Courts shall have all the powers of a Court of Sessions and shall try the offences under the POCSO Act, 2012 as if it were a Court of Sessions and as far as may be in accordance with the procedure prescribed in the Code of Criminal Procedure for trial before a Court of Sessions. Thus, there is no dispute or doubt with regard to the fact that the Special Court after taking cognizance as provided under Section 33(1) of the POCSO Act is required to frame charge against the accused as would be

required during trial by following the provisions of Cr.P.C (now BNSS).

19. Therefore, the question which now arises before this Court, is as to when and at what stage the accused would get an opportunity to file a discharge application. In the absence of any specific provision in the POCSO Act, 2012 the provisions of Cr.P.C (now BNSS) shall regulate the procedure of framing of charge. Moreover, there is no requirement of commitment of the accused to the Special Court as the Special Court itself is authorized to take cognizance of the offence without the accused being committed to it for trial. Therefore, if the provisions of Section 227 of the Cr.P.C, which deals with discharge, is to be applied to the cases that are to be tried under the POCSO Act, 2012, the Special Court is required to consider the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution pass necessary orders as provided in the said section. Section 227 of the Cr.P.C does not specifically speak of filing of an application for discharge by the accused.

20. Similarly, the *pari materia* provision contained in the BNSS i.e. Section 250, which deals with discharge, provides under sub-section 1 that the accused may prefer an application for discharge within a period of 60 days from the date of commitment of the case

under Section 232. Ordinarily, in all sessions triable cases under the BNSS, 2023, a right has been conferred upon the accused to move an application for discharge within 60 days from the date of commitment of the case. However, the cases tried under the POCSO Act, 2012 do not require commitment of the accused for trial to the Special Court. The question, therefore arises, as to from what point should the period of 60 days, as provided in Section 250(1) of the BNSS, 2023, be counted. The aforesaid anomaly has become a grave concern for the Special Courts in the State of Odisha while framing charge. This Court has been flooded with applications challenging the orders of the Special Courts framing charge on the very same date on which the accused appeared before the Court and was provided with police papers.

21. Section 226 of the Cr.P.C which corresponds to Section 249 of the BNSS provides for opening of the case for the prosecution. It lays down that when the accused appears or he is brought before the Court of Sessions in pursuance of a commitment of a case under Section 209 (which corresponds to Section 232 of the BNSS), the prosecutor shall open his case by describing the charge brought against the accused. Since, no commitment procedure is required for the cases triable by the Special Court under the POCSO Act, 2012, a reasonable interpretation would be the date of commitment

shall be the date on which the accused appears or brought before the court for the first time after the cognizance of the offence taken by the Special Court as provided under Section 33(1) of the POCSO Act, 2012. In view of the aforesaid provision, Section 250 of the BNSS is to be read and interpreted in a manner that the starting day of limitation for filing of an application for discharge within a period of 60 days shall be counted from the date of first appearance of the accused before the Special Court after the cognizance of the offence is taken. Similarly, once the accused prefers a discharge application, the case shall be posted for hearing on charge immediately. Thereafter, in view of Section 251(1)(b), the learned Special Court shall frame the charge within 60 days from the date the case is posted for first hearing on charge. This should be a reasonable and fair interpretation of the statutes to avoid any conflict.

22. The provision of Section 227 of the Cr.P.C was introduced at the time of amendment of the Code of Criminal Procedure in the year 1973. Such provision of discharge under Section 227 was introduced newly after abolition of the commitment proceedings as was existing under the old Cr.P.C. Section 227 confers a special power on Judge to discharge an accused at the threshold if upon consideration of the records and documents he finds that there are

no sufficient grounds for proceeding against the accused. In other words, the Judge concerned is required to examine the records and documents at that stage for a limited purpose of ascertaining as to whether there is enough ground for the accused to face the trial or to be discharged at that stage. If the concerned Judge is of the view that there are enough materials against the accused, then he will move ahead to frame charge against the accused, if not, he shall discharge the accused.

23. The expression in Section 227 "*hearing the submission of the accused*" means the submission of the accused on the records of the case as filed by the prosecution and documents submitted therewith. Such view of this Court gets support from the judgment of the Hon'ble Supreme Court in ***Ajay Kumar Parmal vs. State of Rajasthan*** reported in ***(2012) 12 SCC 406***. Similarly, the Hon'ble Supreme Court of India in the case of ***Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao*** reported in ***(2019) 9 SCC 512*** has also laid down the principles to be followed by the concerned court while framing charge under Section 228 of the Cr.P.C In the said judgment it has been laid down that the Court cannot act merely as a post office or a mouth piece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before

the court for consideration at the time of framing of charge, the probative value of the material on record cannot be gone into, however, while framing charge the Court must apply its judicial mind and the materials placed on record must satisfy that the commission of the offence by the accused was possible. The object of incorporating Sections like 227 and 228 in the Cr.P.C is to ensure that the court should be satisfied that the accusation made against the accused is not frivolous and that there is some material for proceeding against him. Thus, it is very clear that the provisions contained in Section 227 and 228 of the Cr.P.C (which corresponds to Section 250 and 251 of the BNSS) are not empty formalities and that the court exercising such power is required to evaluate the entire material and documents made available on record with the object of finding out if the facts emerging therefrom and taken at their face value discloses the existence of all ingredients constituting the alleged offences.

24. Reverting back to the facts of present case and on perusal of the order dated 21.03.2025 of the learned ADJ-cum-SPL Judge (POCSO), Jagatsinghpur, it is clear that the Court initially accepted the vakalatnama of the new counsel for the accused, issued notice to the informant and the victim to be present for the hearing of the accused's bail application on 01.05.2025, supplied the Police paper

to the accused and the Special Public Prosecutor, and remanded the accused to judicial custody up until 12.05.2025. Subsequently, on the same date, i.e. 21.04.2025, another order has been passed by the same Court wherein it has been recorded that both the counsel for the prosecution and the defence were present and were both heard on the point of charge. The order further reveals that the learned Court below has taken into consideration the F.F, the witness statements along with other connected papers and has concluded that there are grounds to presume that the accused has committed the offences punishable under the sections stated hereinabove. Consequently, charge under Section 65(2) of BNS read with Section 6 of POCSO Act was framed against the accused, and the contents of the charge were read over and explained to the accused. The accused has pleaded not guilty, and as such, the learned Court below has fixed a date for hearing the prosecution witnesses on 12.05.2025. Finally, the accused has been remanded to jail custody to be produced on the date of hearing of the witnesses on behalf of the prosecution.

25. From the above discussions, a clear inference maybe drawn that the intention of the legislature in including the 60-day period under sub-section (1) to Section 250 is to provide ample time to the accused to present his properly constituted discharge application so

as to preserve the right of the accused to a fair trial, as envisaged under Article 21 of the Constitution of India. Time and again, various High Courts and the Apex Court of this nation have delivered various judicial pronouncements emphasizing the absolute significance of preserving the right of the accused to a fair trial.

26. In ***Bashira v. State of U.P.***, reported in ***1968 SCC OnLine SC 84***, the trial court appointed an Amicus on the date set for start of trial, amended the charge on the very same date, to which the accused pleaded not guilty, and examined two prosecution witnesses. Later on, the Amicus applied for recall of one of the prosecution witnesses for further cross-examination, however, the application was rejected and arguments were heard on the same day and the judgment of conviction was delivered a couple of days later, convicting the accused under Section 302 IPC and sentencing him to death. The Hon'ble Supreme Court set aside the conviction and sentence of the accused and held that;

> ***"9.*** *In this connection, we may refer to the decisions of two of the High Courts where a similar situation arose. In Re : Alla Nageswara Rao, Petitioner [AIR 1957 AP 505] reference was made to Rule 228 of the Madras Criminal Rules of Practice which provided for engaging a pleader at the cost of the State to defend an accused person in a case where a sentence of*

death could be passed. It was held by Subba Rao, Chief Justice as he then was, speaking for the Bench, that:

"a mere formal compliance with this Rule will not carry out the object underlying the Rule. A sufficient time should be given to the advocate engaged on behalf of the accused to prepare his case and conduct it on behalf of his client. We are satisfied that the time given was insufficient and, in the circumstances, no real opportunity was given to the accused to defend himself".

This view was expressed on the basis of the fact found that the advocate had been engaged for the accused two hours prior to the trial. In Mathai Thommen v. State [AIR 1959 Kerala 241] the Kerala High Court was dealing with a Sessions trial in which the counsel was engaged to defend the accused on 2nd August, 1958, when the trial was posted to begin on 4th August, 1958, showing that barely more than a day was allowed to the counsel to get prepared and obtain instructions from the accused. Commenting on the procedure adopted by the Sessions Court, the High Court finally expressed its opinion by saying:

"Practices like this would reduce to a farce the engagement of counsel under Rule 21 of the Criminal Rules of Practice which has been made for the purpose of effectively carrying out the duty cast on courts of law to see that no one is deprived of life and liberty without a fair and reasonable opportunity being afforded to him to prove his innocence. We consider that in cases like this counsel should be engaged at least some 10 to 15 days before the trial and should also be furnished with copies of the records."

In our opinion, no hard and fast rule can be laid down as to the time which must elapse between the appointment of the counsel and the beginning of the trial; but, on the circumstances of each case, ***the Court of Session must ensure that the time granted to the counsel is sufficient to prepare for the defence.*** *In the present*

case, when the counsel was appointed just before the trial started, it is clear that there was failure to comply with the requirements of the rule of procedure in this behalf."

(Emphasis supplied)

27. Likewise, the concept of a "fair hearing" is imperative in conducting a fair trial and preserving the right guaranteed to the accused under Article 21 of our Constitution. The object of a criminal trial is to arrive at the truth of the matter and a criminal trial is "not a bout over technicalities" (reference maybe had to ***Zahira Habibulla H. Sheikh v. State of Gujarat***, reported in ***(2004) 4 SCC 158***, otherwise known as the "Best Bakery case"). It is paramount for the Trial Court to ensure that the criminal trial is conducted in a manner that will ensure the innocent are safeguarded and the guilty are punished. In the aforesaid *Best Bakery case* (*supra*), The Hon'ble Supreme Court has led emphasis on the need to ensure that a fair hearing is provided to the accused so as to prevent the miscarriage of justice and made the following observations;

"38. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and

protect the innocent, ***the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty****. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.*

39. ***Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.***

40. ***The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.***

(Emphasis supplied)

28. In ***Mohd. Hussain v. State (Govt. of NCT of Delhi)***, reported in ***(2012) 9 SCC 408***, the Hon'ble Supreme Court has enumerated the importance of upholding the accused's right to 'fair trial' as against the principle of 'speedy trial' in paragraph 40, in the following manner;

*"****40. "Speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in***

defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. *Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment.* ***The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice.*** *The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered."*

(Emphasis supplied)

29. In a similar vein in ***Anokhilal v. State of M.P.***, reported in ***(2019) 20 SCC 196***, the Hon'ble Supreme Court dealt with a matter wherein the Amicus Curiae was called upon to defend the accused at the stage of framing of charges on the very same date that he was appointed. The trial court proceeded to convict the accused and the conviction was upheld by the High Court. The Hon'ble Apex Court set aside the judgments of conviction and orders of sentence passed

by the trial court and the High Court against the appellant and directed de novo consideration of the matter and made the following observations;

> ***"21.*** *In the present case, the Amicus Curiae, was appointed on 19-2-2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the Amicus Curiae did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the Amicus Curiae could come to grips of the matter, the charges were framed.*
>
> ***22. The provisions concerned viz. Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, and after "hearing the submissions of the accused and the prosecution in that behalf". If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant****.*
>
> ***23.*** *In our considered view, the trial court on its own, ought to have adjourned the matter for some time so that the Amicus Curiae could have had the advantage of sufficient time to prepare the matter. The approach adopted by the trial court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful.*
>
> ***

*26. **Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded**. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.*

***27.** In the circumstances, going by the principles laid down in Bashira [Bashira v. State of U.P., (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] , we accept the submission made by Mr Luthra, the learned Amicus Curiae and **hold that the learned counsel appointed through Legal Services Authority to represent the appellant in the present case ought to have been afforded sufficient opportunity to study the matter and the infraction in that behalf resulted in miscarriage of justice.** In light of the conclusion that we have arrived at, there is no necessity to consider other submissions advanced by Mr Luthra, the learned Amicus Curiae.*

***28. All that we can say by way of caution is that in matters where death sentence could be one of the alternative punishments, the courts must be completely vigilant and see that full opportunity at every stage is afforded to the accused.**" *

(Emphasis supplied)

30. The observance of the principles of fair trial and fair hearing assume particular significance when the matter at hand involves an offence where there is a possibility of the accused being punished

with grave punishment. In the instant case, the accused has been charged under Section 65(2) of the BNS and Section 6 of the POCSO Act, and is liable to be punished with minimum of twenty years of imprisonment and a maximum punishment of Death. In such context, this Court observes that while expeditious disposal is undoubtedly an avowed objective of every trial involving such offences and forms an integral part of the guarantee of a fair trial, attempts to expedite the process should not be at the cost of fairness or affording an opportunity to the accused, as prescribed in the procedural law, to defend himself. A sound criminal justice system rests upon these foundational principles, and, as such, the pursuit of speedy trial must never result in sacrificing the cause of justice. What must remain paramount is the administration of justice itself, even though the process may be expedited, it cannot be allowed to undermine or extinguish the essential safeguards that secure justice. In ***V.K. Sasikala v. State,*** reported in ***(2012) 9 SCC 771***, the Hon'ble Supreme Court expressed its apprehension in this regard in the following manner;

> *"23.4. While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well-entrenched principles of law that have been laboriously built by illuminating judicial precedents are sacrificed or compromised. In no circumstance, can the cause of justice be made to suffer,*

though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time."

31. In the instant case, the impugned order dated 21.04.2025 of the ADJ-cum-Special Judge (POCSO), Jagatsinghpur, under Annexure-5 to the present CRLMC application, reveals that the learned court below has framed the charge against the accused on the very same day on which a new defence counsel was appointed and the police papers were supplied to the accused. It must be mentioned that the learned court below has recorded in the said order that the counsel from both sides were present and they have been heard on the "point of charge". However, there is no mention in the order sheet as to whether any discharge application has been presented by the accused or his counsel. Accordingly, in view of the aforesaid analysis of law, taking into consideration the fact that the offences involved in the present case attract grave punishment, this Court is of the considerate view that the right of the accused to a fair trial, as enshrined under Article 21 of the Constitution of India, has been violated on account of the very fact that the learned defence counsel did not have the opportunity to go through the basic documents or the police papers, which were supplied to the accused on the date the defence counsel was appointed and the charge was framed.

32. In view of the aforesaid analysis of fact as well as the legal position, it cannot be held that any meaningful hearing for the purpose of Sections 250 and 251 BNSS have been conducted before framing of charge against the accused. As such, this Court has no hesitation in setting aside the second part of the impugned order dated 21.04.2025 of the learned ADJ-cum-Special Judge (POCSO), Jagatsinghpur, under Annexure-5, passed in the later part of 21.04.2025. Accordingly, the same is hereby set-aside. Consequently, it is directed that the matter be considered de novo by the learned Court in seisin over the matter from the stage of discharge. The Petitioner is directed to approach the Court in seisin over the matter by filing a discharge application within two weeks from the date of this judgment. In such eventuality, the learned Court in seisin over the matter shall consider such discharge application of the Petitioner in accordance with law, within four weeks thereafter before framing the charge.

33. Keeping in view the analysis of the legal position made in the preceding paragraphs and further to clarify the confusion which has arisen after the POCSO Act was enacted and with the introduction of the Bharatiya Nagarika Surakshya Sanhita, 2023 (BNSS), this Court observes that the Special Courts trying cases

under the POCSO Act should follow the following procedure while framing charge against the accused;

(i) Since no commitment procedure has been prescribed in the POCSO Act for the cases triable by the Special Court, the date of appearance before the Special Court or the date on which accused was brought before such court for the first time after cognizance of the offence is taken under Section 33(1) of the POCSO Act, 2012 such date shall be treated as the date of commitment for the purpose of Section 250(1) of the BNSS.

(ii) From the date of appearance of the accused/ the date when the accused was brought before the Special Court for the first time;

(a) the accused shall forthwith be provided with the police papers as provided in Section 231 of BNSS, if not already provided.

(b) the accused may prefer an application for discharge within 60 days thereafter under Section 250(1) of the BNSS.

(iii) If the accused does not want to file an application for discharge, such intention shall be given in writing by the accused in the shape of a memorandum.

(iv) On filing of the memorandum as per clause-(iii), the Special Court shall proceed further to frame charges against the accused.

(v) In the event the accused files an application for discharge as per clause-(ii)(b) hereinabove, such application shall be considered under Section 250(2) BNSS after providing a reasonable opportunity of hearing to the accused and the prosecution and the same shall be disposed of forthwith i.e. not later than 60 days from the first date of hearing on charge.

(vi) Unless the accused is discharged under Section 250(2) of BNSS due to lack of sufficient ground to proceed against the accused, the Special Court shall proceed to frame charge against the accused within 60 days from the first date of hearing on charge under Section 251(1)(b) of the BNSS.

34. Accordingly, the CRLMC is disposed of. However, there shall be no order as to costs.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The 22nd September, 2025/ Anil/ Jr. Steno